HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.6127 of 2002

Date: 11.07.2007

Between:

M/s Sri Sai Wines

….Petitioner

and

The Government of A.P., represented by its
Secretary, Department of Revenue (Excise) and others

….Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.6127 of 2002

O R D E R:

The petitioner was granted licence in IL-24 under the A.P. Excise Act, 1968, for Mohamadabad Village, Ranga Reddy District, initially for the year 1998-99. It was renewed year-after-year up to 2001-2002. The licence fee depended upon the population of the village. For the shop in question, the licence fee was fixed by taking the population as less than 10,000.

The 3rd respondent issued proceedings dated 26.3.2002 requiring the petitioner to pay a sum of Rs.4,70,000/-, being the differential licence fee for the 4 years. It was stated that the population of the village, on verification, was found to be in excess of 10,000 and in that view of the matter the petitioner is liable to pay the said amount. The proceedings were challenged in this writ petition.

The petitioner submits that he was not issued any show cause notice and the demand was made straightaway, proceeding as though the population of the village was in excess of 10,000. He contends

that once the respondents themselves have fixed the licence fee, it is not open to them to levy additional amount, that too, after the expiry of the licence period.

The respondents filed a counter affidavit narrating the circumstances that led to issuance of the impugned proceedings.

Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.

From a perusal of the impugned proceedings, it is evident that the sole basis for the demand made through it is the assumption of the 3rd respondent that the population of the village at the relevant point of time exceeded 10,000. It is not as if the licence was issued to the petitioner on a representation made by him, indicating the population of the village. The licence fee was determined by the respondents duly taking into account, the figures in the Census applicable for the concerned years.

Even assuming that a genuine mistake has crept in the matter of determination of the licence fee, the 3rd respondent ought to have issued notice to the petitioner before levying the amount. It is quite possible that had the licence fee been fixed at Rs.3,00,000/- for the village instead of Rs.2,00,000/- in the year 1998-99, the petitioner would not have chosen to obtain the licence.

Further, the entire business for the year has been conducted taking the licence fee and other aspects into account. It is not out of place to mention that the licencee had no discretion in the matter of

fixation of price of the items of liquor to be sold under the licence. It is, therefore, natural that a licencee arranges his business keeping in view the volume of business and the obligation to pay the licence fee. If after the closure of excise year the petitioner is required to pay the additional amount, it would certainly amounts to penalizing him. Though the power of the State, to demand differential licence fee, on the basis of the actual population was upheld by this court, the demand cannot be made without a show cause notice. Question of limitation also needs to be considered.

Viewed from any angle, this court does not find any basis for the demand made by the 3rd respondent. The writ petition is allowed and the impugned proceedings dated 26.3.2002 are set aside leaving it open to the respondents to take necessary steps, in accordance with law. There shall be no order as to costs.

_____

L.NARASIMHA REDDY, J

11th July, 2007.
cvm